

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

FREE RANGE CONTENT, INC., a California Corporation, COCONUT SOFTWARE, INC., a Hawaii Corporation, TAYLOR CHOSE, a Minnesota resident, and MATTHEW SIMPSON, a British Columbia, Canada resident, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No. 5:14-cv-02329-BLF

**DECLARATION OF BRIAN A.
PINKERTON REGARDING
DISSEMINATION OF SETTLEMENT
NOTICE AND CLAIMS
ADMINISTRATION**

**DECLARATION OF BRIAN A. PINKERTON REGARDING DISSEMINATION OF
SETTLEMENT NOTICE AND CLAIMS ADMINISTRATION**

I, BRIAN A. PINKERTON, declare as follows:

1. I am a Senior Project Manager of Client Services for Epiq Class Action & Claims Solutions, Inc. (“Epiq”).¹ The following statements are based on my personal knowledge and information provided by other GCG employees working under my supervision, and if called on to do so, I could and would testify competently about these issues.

2. GCG has a considerable amount of expertise in class action administration and the development of notice programs. In its history of over 30 years, our team has served as administrator for over 3,400 settlements. GCG has mailed hundreds of millions of notices,

¹ Garden City Group, LLC (“GCG”) was acquired by Epiq on June 15, 2018 and is now continuing operations as part of Epiq. All references herein to either Epiq or GCG are used interchangeably to refer to the integrated Epiq organization.

disseminated over 375 million emails, handled over 35 million phone calls, designed and launched over 1,000 settlement websites, issued approximately 39 million payments, and distributed over \$72 billion in benefits.

3. GCG was selected by the Parties and appointed by the Court as the Settlement Administrator in the above-captioned cases in accordance with the Settlement Agreement dated October 4, 2018² (“Agreement”)³ and the Court’s May 7, 2018 Order Granting (1) Preliminary Approval of Class Action Settlement, (2) Approval of Class Notice and Administration Forms, and (3) Provisional Certification of Settlement Class (“Order”). I submit this declaration to provide the Court and Parties with information relating to GCG’s administration of the approved Settlement including dissemination of Notice and the administration and review of Claims, Opt-Out Forms, and Objections.

CAFA NOTICE

4. In accordance with Section 4.8 of the Agreement, on March 9, 2018, GCG served upon all required government officials written notice of the Settlement Agreement. The notice included a compact disc containing the: 1) The Complaints filed in this action; 2) Plaintiffs’ Notice of Motion and Motion for Preliminary Approval of Settlement; 3) Declaration of Robert F. Lopez in Support of Plaintiffs’ Motion for Preliminary Approval of Settlement (with Exhibits); 4) Class Action Settlement Agreement; 5) The Confidential Supplemental Settlement Agreement (filed with the Court under seal); 6) The Court’s Order Granting Plaintiffs’ Administrative Motion to File Under Seal Confidential Supplemental Settlement Agreement; 7) Declaration of Shandarese Garr Regarding Notice Plan, Claims, and Requests for Exclusion (with Exhibits including, *inter*

² The Class Action Settlement Agreement was originally filed with the Court on May 5, 2018, however it was modified by mutual agreement of the parties and re filed on October 4, 2018.

³ All capitalized terms not otherwise defined in this document shall have the meaning ascribed to them in the Agreement

alia, Website Notice, Email Notice, and Supplemental Postcard Notice); and 8) Notice of Proposed Class Action Settlement (a.k.a. “Website Notice”). Attached hereto as **Exhibit A** is a copy of the CAFA Notice cover letter and Service List. GCG confirmed delivery for each addressee of the CAFA Notice cover letter and accompanying CD. The delivery confirmation sheet is attached hereto as **Exhibit B**.

CLASS DATA

5. On April 27, 2018, Defendant’s Counsel, Cooley LLP, provided GCG with access to their secure file transfer site for the purposes accessing the Settlement Class Member contact information (“Class Data”). This initial set of the Class Data consisted of an Excel file containing 192,647 rows of names, addresses, email addresses, and AdSense Publisher ID Numbers for Settlement Class Members whose AdSense Publisher accounts were terminated between the beginning of the Class Period and July 23, 2017. GCG promptly loaded the Class Data into a secure database, which was created specifically for this settlement (“Settlement Database”).

6. On May 14, 2018, Cooley LLP provided an additional Excel file containing the same contact information as the initial Class Data file for Settlement Class Members whose AdSense Publisher accounts were terminated between July 24, 2017 and May 7, 2018. GCG reviewed this supplemental data file determined that it contained 4,686 unique Settlement Class Member records, which GCG promptly loaded into the Settlement Database.

7. The total number of Settlement Class Member records in the Class Data provided to GCG on or before May 14, 2018 was 197,333. Of those, 195,781 had email addresses. On May 23, 2018, Defendant’s Counsel notified GCG that Google was able to locate “fallback” email addresses for the 1,552 Settlement Class Members who did not have an email address listed in the

first two Class Data files. GCG promptly loaded the email addresses for these Settlement Class Members in to the Settlement Database.

8. On September 18, 2018, the Parties notified GCG that Google had identified a relatively small number of Settlement Class Members who had inadvertently been left out of the initial Class Data files. On September 19, 2018, Defendant's Counsel provided GCG with a fourth and final Class Data file that contained contact information and AdSense Publisher ID Numbers for 3,208 "additional Settlement Class Members." GCG promptly loaded the email addresses for these additional Settlement Class Members in to the Settlement Database.

PRESS RELEASE

9. Pursuant to Paragraph 14 of the Order, and in accordance with Section 4.5 of the Agreement, GCG coordinated the release of a national Press Release on May 9, 2018 through US Newswire's US1 commercial newswire service. A true and correct copy of the Press Release is attached hereto as **Exhibit C**.

NOTICE DISSEMINATION TO SETTLEMENT CLASS MEMBERS

10. Pursuant to Paragraph 11 of the Order and in accordance with Section 4.2 of the Agreement, on May 18, 2018, GCG attempted to send Direct Email Notice to the 195,781 Settlement Class Members who had an email address in the Class Data as of that date. 157,111 of the Email Notices were delivered on the first attempt. The other 38,670 Email Notices were undeliverable. A true and correct copy of the Email Notice is attached hereto as **Exhibit D**.

11. As noted in the Class Data section above, on May 23, 2018, Defendant's Counsel provided GCG with email addresses for the 1,552 Settlement Class Members who did not have an email address listed in the first two Class Data files. On May 30, 2018, GCG attempted to send Direct Email Notice to each of the 1,552 Settlement Class Members who had not been included in

the initial Email Notice attempt on May 18, 2018. 1,198 of the Email Notices were delivered. The other 354 were undeliverable.

12. In total, the Direct Email Notice was delivered to 158,309 of the 197,333 Settlement Class Members whose contact information was provided to GCG prior to May 14, 2018. Thus, through Direct Email Notice alone, over 80% of the Settlement Class received Notice. As such, it was determined that it would not be necessary to issue Supplemental Digital Notice pursuant to Section 4.6 of the Agreement because over 72% of the Settlement Class had received Direct Notice of the settlement.

13. On May 29, 2018, GCG reviewed the statistics for the initial 157,111 Email Notices that had been delivered to Settlement Class Members on the first attempt and determined that 146,820 of them had not yet been opened by the recipient. Pursuant to Section 4.2.4 of the Agreement, on May 30, 2018, GCG re-sent the Email Notice to these 146,820 Settlement Class Members.

14. Pursuant to Paragraph 12 of the Order and in compliance with Section 4.3 of the Agreement, GCG mailed the Supplemental Postcard Notice to all of the Settlement Class Members to whom the initial Email Notice was undeliverable. In addition, GCG mailed the Supplemental Postcard Notice to all 1,552 of the Settlement Class Members who did not initially have email addresses in the Class Data. On June 1, 2018, GCG mailed the Supplemental Postcard Notice to 40,223 Settlement Class Members. A true and correct copy of the Supplemental Postcard Notice is attached hereto as **Exhibit E**.

15. Of the 40,223 Settlement Class Members to whom GCG mailed the Supplemental Postcard Notice, 36,058 had United States addresses. Prior to mailing the Supplemental Postcard Notice, GCG compared the U.S. addresses to the National Change of Address (“NCOA”) database,

which is maintained by the United States Postal Service.⁴ Of the 36,058 addresses compared to the NCOA database, 3,178 were returned with updated addresses. GCG updated these addresses in the Settlement Database and mailed the Supplemental Postcard Notice to the updated addresses.

16. As of September 4, 2018, GCG had received 59 Supplemental Postcard Notices returned by USPS with forwarding address information. Supplemental Postcard Notices returned with forwarding address information were promptly updated in the Settlement Database and were re-mailed to the updated addresses.

17. As of September 4, 2018, GCG had received 10,671 Supplemental Postcard Notices returned by USPS as undeliverable without forwarding address information.

NOTICE DISSEMINATION TO ADDITIONAL SETTLEMENT CLASS MEMBERS

18. In compliance with Section 4.7 of the Agreement, On October 4, 2018, GCG attempted to send Direct Email Notice to each of the 3,208 additional Settlement Class Members whose contact information was provided to GCG on September 19, 2018. 2,932 of the Email Notices to additional Settlement Class Members were delivered. The other 276 were undeliverable. A true and correct copy of the Email Notice to Additional Settlement Class Members is attached hereto as **Exhibit F**.

19. In total, the Direct Email Notice to Additional Settlement Class Members was delivered to 2,932 of the 3,208 additional Settlement Class Members. Thus, through Direct Email Notice alone, over 91% of the additional Settlement Class received Notice. As such, it was determined that it would not be necessary to issue Supplemental Digital Notice pursuant to Section

⁴ The NCOA database is the official United States Postal Service (“USPS”) technology product which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mailstream. This product is an effective tool to update address changes when a person has completed a change of address form with USPS. The address information is maintained on the database for 48 months.

4.6 of the Agreement because over 72% of the additional Settlement Class Members had received Direct Notice of the settlement.

20. On October 9, 2018, GCG reviewed the statistics for the 2,932 Email Notices that had been delivered to additional Settlement Class Members on the first attempt and determined that 2,910 of them had not yet been opened by the recipient. Pursuant to Section 4.2.4 of the Agreement, on October 10, 2018, GCG re-sent the Email Notice to Additional Settlement Class Members to these 2,910 additional Settlement Class Members.

21. On October 10, 2018, GCG mailed the Supplemental Postcard Notice to the 236 additional Settlement Class Members to whom the initial Email Notice was undeliverable and for whom the Class Data included a complete, potentially-deliverable address. A true and correct copy of the Supplemental Postcard Notice that was sent to additional Settlement Class Members is attached hereto as **Exhibit G**.

22. As of January 23, 2019, GCG has received a total of 3 Supplemental Postcard Notices to Additional Settlement Class Members returned by USPS with forwarding address information. Supplemental Postcard Notices returned with forwarding address information were promptly updated in the Settlement Database and were re-mailed to the updated addresses.

23. As of January 23, 2019, GCG has received a total of 71 Supplemental Postcard Notices to Additional Settlement Class Members returned by USPS as undeliverable without forwarding address information.

24. Including both Direct Email Notice and Supplemental Postcard Notices sent to Settlement Class Members and additional Settlement Class Members, at least one form of Direct Notice reached approximately 80% of the Settlement Class.

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DECLARATION OF
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SETTLEMENT WEBSITE

25. GCG established and maintains a website for the Settlement, www.AdSensePublisherSettlement.com, to provide information and important deadlines to Class Members and answer frequently asked questions. Users of the Settlement Website can review Settlement documents including the long form notice (Website Notice) in both English and French, the Agreement, the Order, Plaintiffs' Notice of Motion and Motion for Service Awards, Attorneys' Fees, and Costs and Expenses, the Court's Order Resetting the Fairness Hearing, and Plaintiffs' Re-Notice of Motion for Service Awards, Attorneys' Fees, and Costs and Expenses, among others. The Settlement Website also includes a "Contact Us" page, which allows Class Members to submit emails to the Settlement Administrator directly through the Settlement Website and provides multiple options for contacting GCG including the toll-free helpline number, settlement email address, settlement P.O. Box, and settlement fax line.

26. The Settlement Website was also created with the capability to allow Class Members to submit Claim Forms, Opt-Out Forms, and Objections electronically as well as the ability to print paper versions of each of the forms. The online submission portals for each of these forms were active from May 8, 2018 through September 4, 2018, which was the deadline for Settlement Class Members to file a claim, opt-out, or object to the Settlement.

27. On October 3, 2018, the day before GCG disseminated the Email Notice to Additional Settlement Class Members, GCG updated the Settlement Website to include information about the additional Settlement Class Members including the applicable deadlines, updated notice documents, and the Court's Order rescheduling the Fairness Hearing to February 7, 2019.

28. Additionally, on October 3, 2018, GCG re-activated the online Claim Form portal

with updated access requirements, which allowed only additional Settlement Class Members to login and submit Claims. Settlement Class Members who were sent Direct Notice prior to October 4, 2018 who tried to submit a claim through the Settlement Website on or after October 4, 2018, would have received an error message informing them that the deadline for them to file a claim was September 4, 2018. Similarly, the Opt-Out Form and Objection Form were also re-activated and accessible only to additional Settlement Class Members on October 3, 2018.

29. In compliance with Section 4.4 of the Agreement, the Settlement Website has been operational since May 8, 2018, and is accessible 24 hours a day, seven days a week. GCG will continue to maintain and update the Settlement Website throughout the administration of the Settlement for at least 90 days after the Effective Date of the Settlement in accordance with Section 4.4.3 of the Agreement. As of January 23, 2019, there have been 37,822 visits to the Settlement Website.

TOLL-FREE HELPLINE

30. In accordance with paragraph IV(A)(5) of the Agreement, GCG set up and continues to maintain an automated toll-free telephone number (1-888-684-5073) where potential Settlement Class Members can obtain information about the settlement. This toll-free helpline has been active since May 9, 2018, and is accessible 24 hours a day, seven days a week. Callers can obtain information regarding the settlement, including applicable deadlines to act, the Settlement Website address, and information about how to file a claim, opt-out, or object to the settlement. Settlement Class Members who call the toll-free number also have the option to speak with a live representative between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time Monday through Friday. As of January 23, there have been 964 calls to the toll-free telephone number.

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DECLARATION OF
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CLAIMS

31. Pursuant to Paragraph 16 of the Order and Section 3.2 of the Agreement, Settlement Class Members who were sent Direct Notice before October 4, 2018 were required to submit a complete and valid Claim Form via facsimile transmission, online submission via the Settlement Website, or via U.S. Mail postmarked on or before September 4, 2018, which was 60 days after the Notice Date, in order to receive any relief from the settlement. The deadline for additional Settlement Class Members (who were sent Direct Notice on or after October 4, 2018) to submit a Claim Form was December 17, 2018. A true and correct copy of the Claim Form is attached hereto as **Exhibit H.**⁵

32. As of January 23, 2019, GCG has received 10,493 unique claims. Of those, 910 were submitted by individuals who were not included in the Class Data and were determined upon review by both GCG and Google to be outside of the Settlement Class. 34 Settlement Class Members submitted an otherwise valid Claim Form after the applicable Claims Deadline had passed, and pursuant to Section 3.3 of the Agreement those claims will be rejected. Additionally, one Settlement Class Members submitted a Claim Form that was not signed. GCG sent notice to the Settlement Class Member to provide an opportunity to cure the deficiency in accordance with Section 3.4 of Agreement. The Settlement Class Member who submitted a claim form without a signature did not respond to cure the deficiency, and the claim will be rejected.

33. As of January 23, 2019, there are 9,548 Valid Claims that are eligible to receive payment under the terms of Agreement if the Court grants final approval to the settlement and the settlement becomes final. Google has indicated that three of these claims relate to AdSense

⁵ The only difference between the Claim Form for Settlement Class Members who were sent Direct Notice prior to October 4, 2018 and additional Settlement Class Members who were sent notice on or after October 4, 2018 was the deadline to submit the claim printed in the upper left corner of the first page. As such, only one version is attached.

Accounts that were terminated on two separate occasions and fall into two different Payment Groups, so the total number of payments to be made would be 9,551.

SETTLEMENT PAYMENT CALCULATIONS

34. In compliance with Section 3.7 of the Agreement, on January 14, 2019, Defendant's Counsel provided the data necessary for GCG to determine which Payment Group each Settlement Class Member belongs to and to calculate the Adjusted Amount for each Payment Group. In compliance with Section 3.3 of the Agreement, GCG will compare the information provided by Google about which Settlement Class Members submitted a written notice of dispute against the documentation submitted by Settlement Class Members with their Valid Claims. GCG has not completed its review of the dispute documentation submitted with Valid Claims, so the following estimates are based on the payment data provided by Google and may change based on the results of GCG's review.

35. Based on the payment data provided by Google pursuant to Sections 3.3 and 3.7 of the Agreement, GCG has calculated that the Gross Amount Allegedly Withheld from all Settlement Class Members who submitted valid claims was \$19,737,936.01. The total consists of 1,897 Settlement Class Members in Payment Group 1 whose combined Amount Allegedly Withheld was \$7,344,305.92; 2,998 Settlement Class Members in Payment Group 2 whose combined Amount Allegedly Withheld was \$4,045,904.87; and 4,656 Settlement Class Members in Payment Group 3 whose combined Amount Allegedly Withheld was \$8,347,725.23.

36. GCG calculated the Adjusted Amount for each Payment Group in accordance with the instructions in Section 2.4.3 of the Agreement resulting in a 10/5/3 payment ratio between the three Payment Groups. The Adjusted Amount for Payment Group 1 is the same as the Amount Allegedly Withheld, \$7,344,305.92. The Adjusted Amount for Payment Group 2 is \$2,022,952.44.

the Adjusted Amount for Payment Group 3 is \$2,504,317.57. The total combined Adjusted Amount based on the data provided by Google is \$11,871,575.93.

37. The exact amount in the Net Settlement Fund available for Settlement Payments to Settlement Class Members will depend on the amount of Service Award Payments, Attorneys' Fees, Costs and Expenses, and Administrative Fees approved by the Court. As of January 23, 2019, GCG has invoiced \$97,616.84 through November 2018 for its work as the Settlement Administrator in this matter and plans to hold aside an amount to be agreed upon by GCG and the Parties to cover the costs of future Settlement Administration work, including, but not limited to calculating and distributing Settlement Payments to Settlement Class Members. GCG estimates that the approximate amount in the Net Settlement Fund will be close to \$8,000,000.

38. Settlement Payments will be calculated according to Scenario 3 described in Section 2.4.4 of the Agreement, which requires a pro rata reduction of Settlement Payments to Settlement Class Members that maintains the 10/5/3 payment ratio between the three Payment Groups if the total Adjusted Amount exceeds the Net Settlement Fund.

OPT-OUT REQUESTS

39. Pursuant to Paragraph 17 of the Order and Section 5.2.2 of the Agreement, Settlement Class Members who were sent Direct Notice before October 4, 2018 who wished to exclude themselves from the settlement were required to submit an Opt-Out Form via facsimile transmission, online submission via the Settlement Website, or via U.S. Mail postmarked on or before September 4, 2018, which was 60 days after the Notice Date. The deadline for additional Settlement Class Members (who were sent Direct Notice on or after October 4, 2018) to submit an Opt-Out Form was December 17, 2018. A true and correct copy of the Opt-Out Form is attached hereto as **Exhibit I**.

40. As of January 23, 2019, GCG has received 62 timely Opt-Out Forms and no late Opt-Out Forms. Of those, 45 of the Opt-Out Forms received were submitted by Settlement Class Members or additional Settlement Class Members. A list of the Settlement Class Members who have submitted Opt-Out Forms is attached hereto as **Exhibit J**.

OBJECTIONS

41. Pursuant to Paragraph 18 of the Order and Section 5.1.3 of the Agreement, any Settlement Class Member who was sent Direct Notice before October 4, 2018 and who did not file an Opt-Out Form who wished to object to the settlement was required to submit a written Objection either through the Settlement Website or via U.S. Mail postmarked on or before September 4, 2018, which was 60 days after the Notice Date. The deadline for additional Settlement Class Members (who were sent Direct Notice on or after October 4, 2018) to submit an Objection Form was December 17, 2018.

42. As of January 23, 2019, GCG has received 56 timely Objections and no late Objections directly through the Settlement Website or dedicated Settlement P.O. Box. Of those, 17 of the Objections Forms received were submitted by Settlement Class Members or additional Settlement Class Members. Attached hereto as **Exhibit K** is a list of Settlement Class Members who have submitted Objections, which includes the contents of the “comments” section of each Objection Form. In addition to the Objections listed in Exhibit K and referenced in the counts above, Class Counsel had informed GCG that one additional Objection, which GCG did not receive from the Objector, was submitted by a Settlement Class Member named Eric Melin. GCG did not receive a copy of the Objection or a Claim submission from Eric Melin.

43. At the request of Class Counsel, GCG has verified that each of the following three Objectors has filed a Valid Claim: ABC Agents Inc. (Objection filed by George Dodaj) (GCG No.

1022611); Paul Isaac (GCG No. 1100315); and Blue Island Digital (Objection filed by George Cappel) (GCG No. 1191216).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on January 24, 2019, in Seattle, Washington.

A handwritten signature in blue ink, appearing to read "Brian A. Pinkerton".

BRIAN A. PINKERTON